IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 274 OF 1991.
WITH
CROSS OBJECTION ST.NO.15517 OF 1993.

The State of Maharashtra. ... Appellant.
Versus.
Shri Subhash Shankar Patil. ... Respondent.

Mrs.G.P.Mulekar for the Appellant.

Shri N.V.Gangal for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 12th January, 2007
and
15th Janary, 2007.

ORAL JUDGMENT:

1. The submissions of the learned Assistant Governemnt Pleader appearing for the Appellant and Shri Gangal appearing for the Respondent were heard yesterday. The State of Maharashtra has taken exception to the judgment and award dated 28th March 1990 passed by the learned Second Additional District Judge, Kolhapur in a Reference under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act of 1894"). The acquisition relates to the land bearing Gat No.1613, admeasuring 1 hectare and 19 ares in village Kasaba Kodoli, Taluka Panhala, District Kolhapur. The notification under section 4 of the said Act of 1894 was issued on 16th February 1981. The acquisition was for the public propose of construction

of Warna Right Bank Canal. The Award under section 11 of the said Act of 1894 was made on 21st November 1983. The Respondent was offered total compensation of Rs.13,869/- inclusive of solatium. In the Reference under section 18 of the said Act of 1894, the Respodnent claimed market value at the rate of Rs.25,000/- per acre. By the impuned Judgment and Award the learned trial Judge has fixed the market value at Rs.30,000/- per hectare. The learned trial Judge awarded statutory benefits to the Respondents as per the Land Acquisition (Amendment) Act, 1984. The Respondent has filed cross-objection and has claimed enhanced market value at the rate of Rs.75,000/- per hectare.

2. The learned Assistant Government Pleader submitted that the reliance placed by the leanred trial Judge on the documents at Exh.32 and Exh.33 was completely misplaced as the said sale instances related to smaller portions of lands and the area of the acquired land was 1 hectare and 19 ares. She submitted that the said sale instances cannot form basis of the award in favour of the Respondent. She submitted that in any case the said sale intances were not proved to be of comparable lands. She submitted that apart from the said two sale instances, no other evidence has found favour with the learned trial Judge. Shri Gangal appearing for the Respondent in support of the

cross-objection submitted that there is hardly any difference between the area of the lands which are the subject matter of sale instances at Exhs.32 and 33 and the acquired land. He submitted that in fact the acquired land is more advantageously situated than the land subject matter of the sale instances at Exh.32 which shows the price of Rs.40,000/- per hectare. He, therefore, submitted that the Respondent is entitled to enhancement in the compensation.

3. I have considered the submissions. I have also perused the impugned Judgment and the notes of evidence. The Respondent examined his younger brother Balasaheb Patil at Exh.27. The said Balasaheb is the Constituted Attorney of the Respondent. He stated that the acquired land was irrigated by water from Warna River. He stated that his family members were taking crops of sugarcane and therefore, it was having a high market value. He stated that the land bearing blocks No.17, 197, 1054, 278 and 1162 at Kodoli are situated within a distance of one or two furlong from the suit land. He stated that the quality of the said lands was the same as that of the acquired land. A perusal of the cross examination of the said witness shows that there is no challenge to his version about the location of the land bearing block No.17, 197, 1054, 278 and 1162. Similarly there is no challenge to the statement that the said lands were

comparable lands. So far as the nature of the acquired land is concerned, he admitted that there was only a sugarcane crop in the acquired land which was standing in 1-1/2 acre of the acquired land.

4. It is pertinent to note that the sale instance at Exh.32 relates to block No.17 and the sale instance of Exh.33 relates to block No.197. In view of what is stated above, it is obvious that the said two sale instances are of lands which are comparable to the acquired land. The sale transactions are in a reasonable proximity to the relevant date in this case. The sale transactions reflect the market price of Rs.40,909/- per hectare and Rs.35,294/- per hectare. The learned trial Judge has fixed market value at Rs.30,000/- per hectare. In so far as the other sale instances are concerned, they were of the year 1982. Therefore, the said sale instances are obviously not relevant as the date of section 4 notification in the present case is 16th February 1981.

5. The submission of the learned Advocate for the Respondent is that considering the sale instances at Exhs.32 and 33, the market value at the rate of atleast Rs.40,000/- per hectare ought to have been awarded. It must be noted here that the said two sale instances are in respect of the lands the area which is much less than

the area of the acquired land. The area of the acquired land is 1 hectar and 19 ares. Considering the large area of the acquired land, some deduction will have to be made on account of development charges. Normally such deduction would be in the range of 20% to 33%. If the said deduction is taken into account, it is obvious that the market value of Rs.30,000/- per hectare awarded by the learned trial Judge is just and proper.

6. As the Award under section 11 of the said Act of 1894 was made on 21st November 1983, there cannot be any dispute about the grant of statutory benefits in favour of the Respondents.

9. Thus there is no merit in the Appeal and the Cross Objection and the same desrve to be dismissed.

10. Hence the following order is passed:

i) First Appeal No.274 of1991 is dismissed. The Appellant will pay costs of the Appeal to the Respondent.

ii) Cross Objection St.No.15517 of 1993 is dismissed. No order as to costs.

Judge.